

EUGENE DARREL RUTLEDGE
DOC F-79385
HIGH DESERT STATE PRISON
P.O. Box 3030
SUZANVILLE, CA 96127

FILED

APR 28 2008

E-filing

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVENUE
SAN FRANCISCO, CALIFORNIA 94102

CV 08 2193

CRB

(PR)

RE: PETITION FOR WRIT OF HABEAS CORPUS IN
THE FEDERAL COURT AND THE SUPREME COURT OF CALIFORNIA
LAST RULINGS ON PETITIONS FOR WRIT OF HABEAS CORPUS
FILED IN STATE COURT.

5235

DEAR JUDGE(S) FOR THE U.S. DISTRICT COURT:

I AM NOW ATTEMPTING TO SEEK RELIEF IN THE FEDERAL COURTS FOR THE GROUNDS STATED WITHIN THE PETITION FOR WRIT OF HABEAS CORPUS SENT TO THIS COURT. THIS PETITION COMES FROM THE LAST DENIAL FROM THE SUPREME COURT OF CALIFORNIA. THE GROUNDS WERE NOT GIVEN IN RULING ON THE MERITS. THE LAST DENIAL WAS GIVEN WITH THE CITING OF CALIFORNIA STATE CASES IN RE SWAIN (1948) 34 Cal. 2d 300, 304; PEOPLE v. DURVALL (1985) 9 Cal. 4th 464, 474. YET, HERE IS A CONCERN, I RAISED THE SAME ISSUES IN THIS COURT AS I DID IN THE STATE COURT, BUT I AM TRYING TO ADVANCE PROCEDURAL DEFAULT THAT CAN NOT BE FAIRLY ATTRIBUTED TO ME. UNDER THE IN RE SWAIN SUPRA, THE STATE COURT CAN DISMISS CLAIMS THAT ARE NOT SUFFICIENTLY SPECIFIC, AND THE FEDERAL COURT AGREES

THAT THE CLAIM(S) BROUGHT IN THE STATE COURT WERE NOT ACCESSED WITH SPECIFICITY, THEN THE PETITIONER SHOULD FILE A NEW, MORE DETAILED, HABEAS CORPUS PETITION IN THE STATE COURT IN ORDER TO GET A DECISION ON THE MERITS.

I FIND TWO THINGS THAT ARE UNCLEAR. FIRST THE FEDERAL COURT HAS NOT AGREED THAT THE CLAIMS BROUGHT IN THE STATE COURT WERE NOT SUFFICIENTLY SPECIFIC, SECOND, PETITIONER HAS BROUGHT ISSUES OF INEFFECTIVE ASSISTANCE ISSUES BEFORE THE COURT WHICH ONLY RECEIVED DENIAL ORDERS JUST PAINLY STATING PETITION FOR WRT OF HABEAS CORPUS DENIED WITH NO CITATION OF ANY CASE REFERRING TO ISSUES BEING UNSPECIFIC (SUPREME COURT OF CALIFORNIA NO. S152658, S160704).

IN THE RECORDS OF THE STATE COURTS I HAVE GIVEN THAT COULD THE SAME ISSUES I AM PRESENTING BEFORE THIS FEDERAL COURT. THE ISSUES RAISED IN THE PETITION BEFORE THIS COURT WERE RAISED IN PETITION NO. S160704 WHICH WAS FILED FEBRUARY 7, 2008. HOWEVER THAT PETITION WAS ORDERED FILED AS A SUPPLEMENT TO PETITION NO. S158082 WHICH WAS FILED NOVEMBER 8, 2007 AND DENIED MARCH 26, 2008. I ASSERT THAT I HAVE EXHAUSTED OR COMPILED TO THE EXHAUSTION REQUIREMENTS THAT ALLOW ME ACCESS TO SEEK RELIEF IN THIS COURT. BECAUSE THE STATE SUPREME COURT WAS PRESENTED ISSUES OF FEDERAL DUE PROCESS AND EFFECTIVE ASSISTANCE OF COUNSEL VIOLATIONS. AND THE STATE COURT HAS DISMISSED CLAIMS FOR LACK OF PARTICULARITY AMOUNTS TO HOLDING CLAIMS THEMSELVES DEFECTIVE. (SEE CROTS V. SMITH (9th CIR. 1986) 73 F.3D 861, 865; KIM V. VILLALOBOS (9th CIR. 1986) 799 F.2D (1317, 1319-20) AND THEREFORE I HAVE EXHAUSTED THE EXHAUSTION REQUIREMENT TO OBTAIN FEDERAL HABEAS REVIEW.

IN THE PETITION BEFORE THIS COURT, PETITIONER HAS RAISED
EVERY ISSUE THAT CONTAINS FRAMED FEDERAL CONSTITUTIONAL
VIOLATIONS AND SUBMITTED THEM BEFORE THE STATE'S SUPREME
COURT WHERE NO ADEQUATE AND INDEPENDENT STATE GROUNDS
IS NOT ADEQUATELY ADDRESSED IN THE STATE COURTS OPINION (SEE
COLEMAN V. THOMPSON (1991) 501 U.S. 722, 733-35; SIRI PONO
V. CALERAON (9th Cir. 1994) 38 F.3d 1308, 1316-19; HUNTER
V. AISPURO (9th Cir. 1992) 982 F.2d 344, 346-47)

HOWEVER IF IT IS CONSIDERED THAT THE STATE'S SUPREME
COURT DECISION IS FOUND TO BE INDEPENDENT AND ADEQUATE
STATE GROUNDS(S), PETITIONER SEEKS TO DEMONSTRATE A
CAUSE TO ALLOW FEDERAL HABEAS REVIEW. FIRST, ISSUES
THAT ARE SUBMITTED IN THE STATE COURT, PETITIONER SUBMITTED
THEM BECAUSE THE COUNSEL OF RECORD FOR HIS DIRECT
APPEAL WAS NOT GOING TO RAISE THEM. SECOND, PETITIONER'S
RIGHT TO ISSUES RAISED IN THE DIRECT APPEAL IS MOOTED TO
COUNSEL DECISIONS TO MAKE THEM OR NOT. NOT WITHSTANDING
JUST COUNSEL OF RECORD REFUSAL TO LITIGATE THE FEDERAL
CONSTITUTIONAL VIOLATIONS BEFORE THE STATE COURTS, PETITIONER
HAS IN CASE NO: S152658, S158052; S160704 AND NOW
IS TRYING TO IN THIS COURT BECAUSE FAILURE TO REVIEW THE
CLAIMS WOULD RESULT IN A FUNDAMENTAL MISCARRIAGE OF
JUSTICE TO PETITIONER (COLEMAN V. THOMPSON (1991) 501 U.S. 722,
750).

AS STATED IN THE JUDGEMENT OF THE FEDERAL COURT IN
NO. C 07 - 3663 (RB (PR) ORDER OF DISMISSAL. THE COURT
WAS AWARE OF THE FILINGS OF SEVERAL PETITIONS FOR WRIT
OF HABEAS CORPUS AND/OR PROHIBITION IN THE STATE COURT (SEE
CASE NUMBERS OF CALIFORNIA APPELLATE COURTS NO. A117294;

SI 52355; ██████████, ██████████). THIS DISMISSAL ORDER
WAS ISSUED JULY 23, 2007 BY CHARLES R. BREYER, UNITED STATES
DISTRICT JUDGE WHO DISMISSED WITHOUT PREJUDICE TO REFILING A
NEW PETITION FOR WRIT OF HABEAS CORPUS AFTER ALL PENDING
STATE POST-CONVICTION PROCEEDINGS ARE COMPLETED. PETITIONER
SINCE MARCH 26, 2008 HAS DONE SO AND RESPECTFULLY SEEKS
FEDERAL HABEAS REVIEW BY THIS COURT.

RESPECTFULLY


EUGENE DARREL RUTLEDGE

PETITIONER

ENCLOSURES: LETTERS FROM THE COURT CLERK DATES NOVEMBER 15, 2007;
JANUARY 25, 2008; FEBRUARY 8, 2008; FEBRUARY 20, 2008; SUPREME
COURT OF CALIFORNIA DOCKET LISTING FOR NO. S 160704; SUPREME
COURT OF CALIFORNIA PETITION DENIAL FOR NO. S158052; UNITED
STATES DISTRICT COURT ORDER OF DISMISSAL OF JULY 23, 2007 BY
U.S. DISTRICT JUDGE CHARLES R. BREYER.

4

4

4

4

4

4

4

4

4

4

4

-RUTLEDGE FILE -

PAGE 4 OF 4